

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1190 of 2007

Anbu

.. Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Secretary,
Prohibition and Excise Department
Secretariate, Chennai.

2. The District Magistrate
and District Collector,
Kanchipuram District
Kanchipuram.

.. Respondents

Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Ms.P.Anbazhagan
For Respondents : Mr.N.R.Elango,
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, husband of the detainee by name Govindammal, who was incarcerated at the Central Prison for Women, Puzhal, Chennai, pursuant to an order dated 13.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger, has preferred this writ petition for issue of Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 13.7.2007 in BDFGISSV.No.45/2007, to set aside the same and to direct the respondents to produce the detainee before this Court and set her at liberty.

2. The ground case, based on which the detention order was passed, is that on 13.6.2007, while the Inspector of Police attached to Chunambedu Police Station along with his police party at Puthirankottai village was conducting prohibition raid, the detenie was found in possession of plastic cans containing arrack and selling the same to the persons standing in front of her and when the police apprehended her, she tried to escape, but she was caught. On enquiry, the detenie admitted the offence and when the police smelt the arrack seized from the detenie, it caused irritation in the nose and eyes and also caused giddiness. The detenie was arrested and three white coloured plastic cans, containing about 102 litres of country arrack and other properties were seized. Samples in three bottles were sent for chemical analysis. A case was registered in Crime No.315 of 2007 on the file of Chunambedu Police Station for offences punishable under Sections 4(1)(i), 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act and the detenie was sent to Court for judicial remand. The chemical analysis report revealed that samples of illicit arrack taken in three bottles contained 9.3% mg., 8.8% and 8.8% w/v of atropine respectively.

3. The second respondent, taking into consideration the above ground case and finding that the detenie came to the adverse notice of the authorities in eleven cases of similar nature, viz. in Crime Nos.88/2006, 324/2006, 506/2006, 27/2007 and 109 of 2007 on the file of same police station and in Crime Nos.193/2006, 421/2006, 942/2006, 77/2007, 285/2007 and 490/2007 on the file of Madurantakam Prohibition Enforcement Wing, having satisfied that there is a compelling necessity to detain the detenie in order to prevent her from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a Bootlegger.

4.1. The detention order is assailed on the main ground of omission to set out certain lines in the detention order furnished to the detenie in the language known to her, which deprived of the opportunity of the detenie to make her effective representation objecting to the order of detention.

4.2. In para(i) of the English version of the grounds of detention, while substantiating the subjective satisfaction, the detaining authority has observed as follows:-

" 5.(i) ... Further the recourse to normal criminal law will not have the desired effect of effectively preventing her from indulging in such activities which are prejudicial to the maintenance of public health and public order. On the materials placed before me, ..."

Whereas, in the translated version given to the detenie in Tamil, the only language known to her, it is observed thus:-

"மேலும் சாதாரண குற்றச் சட்டப்பிரிவுகளின் உதவியை நாடுதல் போதிய பலனை தராமல் போய்விடும் என்பதையும் நான் நன்கு அறிவேன். எனக்கு முன்பாக தாக்கல் செய்யப்பட்ட ஆவணங்களிலிருந்து

According to the learned counsel, the above said underlined words found in the English version are the most relevant one, indicating the subjective satisfaction of the detaining authority to detain the detenu under Act 14 of 1982 and in omission of the same in the Tamil version, vitiates the detention order itself.

5. We have heard the learned Additional Public Prosecutor on the above point and perused the paper book placed before us.

6.1. Communicate is a strong word. It requires that sufficient knowledge of the basic facts consisting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable the detenu to make a purposeful and effective representation. Where the grounds are not properly translated, it would tantamount to not serving the grounds to the detenu and would thus vitiate the detention ex facie.

6.2. Concededly, in the instant case, as rightly pointed out by the learned counsel for the petitioner, the words, viz., of effectively preventing her from indulging in such activities which are prejudicial to the maintenance of public health and public order, were totally omitted to be translated in the Tamil version furnished to the detenu.

7. In an identical matter, in H.C.P.No.19 of 2002 (K.Veeramani v. State of Tamil Nadu and another), whereunder a whole paragraph of the original order in English, was omitted to be translated in Tamil, the only language the detenu therein knows, a Division Bench of this Court, by order dated 25.06.2002, observed as follows:-

" 10. The State's power to make orders of preventive detention is a power which is required to be exercised with utmost care and caution, and with scrupulous regard to the need to comply with every one of the constitutional guarantees as also the statutory requirements. The Courts have time and again emphasised that preventive detention is a hard law and strict compliance with the requirements of law will be insisted upon by the Courts. The duty of the State in this regard is a heavy one, but it is a duty, which must be discharged to the satisfaction of the Courts if it expects to make effective use of its powers of preventive detention.

11. The rationale for preventive detention is the need to protect society from persons whose conduct is inimical to the country's safety or society's welfare and the urgency of the need to take prompt action against them without having to wait for the normal procedures of the person being brought to trial and, thereafter, in case of conviction being incarcerated. The duty to protect the country and the society casts an obligation on the State to ensure that whenever it exercises power of preventive detention, it exercises the same with due care and that the exercise conforms to other requirements of law. Omission to do so would be an instance of the State failing in its duty to protect the country and the society."

The Division Bench, while observing thus, necessitated the Government and the officials concerned, to take necessary steps to prevent recurrence of such mistakes while passing the detention order and also to take appropriate action against the persons, who deliberately make omission by mala fide intentions, in order to protect the public from the very persons whose activity is considered by the State to be inimical to public welfare and whose detention is considered by the State itself to be necessary.

8. That apart, when a similar ground, as raised in this H.C.P., was raised before this Court in H.C.P. No.2 of 2007 (between R.Indira and State of Tamil Nadu and another), a Division Bench of this Court, by order dated 12.4.2007, while observing that the grounds of detention must be made known to the detenu in a language known to him, which is the constituent requirement of law, held that since the Tamil order of detention does not indicate about the conclusion of the detaining authority on factual aspect, the order of detention is liable to be quashed.

9. Admittedly, in the instant case, the words found in the English version of the grounds of detention, viz., of effectively preventing her from indulging in such activities which are prejudicial to the maintenance of public health and public order, do not find place in the Tamil version of the grounds of detention furnished to the detenu. Unless the detenu was made known as to the grounds of detention in clear terms, i.e., in the language known to her, in our considered opinion, undoubtedly, it would have caused prejudice to the detenu to submit her effective representation, since, as observed earlier, where the grounds are not properly translated, it would tantamount to not serving the grounds itself to the detenu and would thus vitiate the detention ex facie.

For our foregoing conclusion, the order of detention is set aside and the habeas corpus petition is allowed. The detainee is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

sra Sub Asst.Registrar

To:

1. The Secretary to Government
Prohibition and Excise Department
Secretariat, Chennai-9.
2. The District Magistrate
and District Collector,
Kanchipuram District
Kanchipuram.
3. The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law and Order)
Fort St.George, Chennai -9.

H.C.P.No.1190 of 2007

AKR(CO)
RVL 29.11.2007

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